

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Widmon Butler)	OEA Matter No. J-0421-10
Employee)	
)	Date of Issuance: January 5, 2012
v.)	
)	Senior Administrative Judge
Metropolitan Police Department)	Joseph E. Lim, Esq.
Agency)	

Teresa Hyden, Esq., Agency Representative
David A. Branch, Esq., Employee Representative

INITIAL DECISION

INTRODUCTION

On October 8, 2010, Employee, a Human Resource Specialist (Medical Claims Examiner), Grade 12, Step 7 in the Career Service, filed a petition for appeal from Agency's final decision suspending him for neglect of duty and untruthful statement.

On September 22, 2011, I issued an Order to Employee to respond to Agency's Motion to Dismiss. Employee had submitted his brief. Since a decision could be rendered based on the documents contained in the case file, no proceedings were held. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether Employee's appeal should be dismissed for lack of jurisdiction.

STATEMENT OF FACTS

The following facts are not in dispute:

1. Employee was a civilian Human Resource Specialist, Grade 12, Step 8, detailed to

- Metropolitan Police Department's (MPD or Agency) Medical Services Branch as a Medical Claims Examiner. His job was to classify MPD members' injuries as Performance of Duty ("POD") or Non Performance of Duty ("Non POD").
2. An MPD officer filed a POD claim for a March 24, 2010, knee injury.
 3. Employee processed the claim and determined that it was a Non POD claim. He then submitted his report to Director Quander.
 4. Director Quander identified discrepancies in the report and ordered Employee to submit supporting documentation.
 5. After receiving Employee's responses, Director Quander ordered an investigation on Employee's gross negligence. This incident was designated DRD #280-10/IS#10-001376. Employee refers to this as "Suspension #1."
 6. On July 23, 2010, Agency proposed to suspend Employee for fifteen days.
 7. After a hearing conducted by Commander Scott, he recommended retraining and a reduction of the penalty.
 8. On August 25, 2010, Agency issued a Notice of Final Decision reducing the suspension to five (5) days and ordering Employee to an Employee Improvement Plan. (See August 25, 2010, Notice of Final Decision.)
 9. Employee filed the instant appeal of DRD #280-10/IS#10-001376 on October 8, 2010.
 10. In a separate incident designated by Agency as DRD #227-10/IS#10-001120, Agency proposed to suspend Employee for fifteen (15) days but then reduced the penalty to ten (10) days whereby Employee was ordered to serve only five (5) days suspension without pay with another five (5) days held in abeyance. (See August 4, 2010, Notice of Final Decision.) Employee refers to this as "Suspension #2."
 11. Because the charges stemming from DRD #280-10/IS#10-001376 were sustained, Agency informed Employee that he would have to serve the five (5) day suspension that had been held in abeyance in the DRD #227-10/IS#10-001120 incident.
 12. Employee states that he had filed an appeal of DRD #227-10/IS#10-001120 separately as OEA Matter No. 1601-0397-10.
 13. In his opposition to Agency's motion to dismiss for lack of jurisdiction, Employee asserts that he has actually served a fifteen (15) day suspension.

14. According to Employee, he has served a ten-day suspension out of a proposed fifteen (15) days arising from the previous incident designated as DRD #227-10/IS#10-001120.
15. Adding the two separate suspensions together, Employee served a combined fifteen (15) days of suspension (5 days for the DRD #280-10/IS#10-001376 incident, and 10 days for the DRD #227-10/IS#10-001120 incident) starting September 27, 2010.

ANALYSIS AND CONCLUSIONS

Based on a review of the Petition for Appeal, a question arose as to whether this Office has jurisdiction over this matter. An employee has the burden of proof as to issues of jurisdiction. *See* OEA Rule 629.2, 46 D.C. Reg. 9317 (1999).

The D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.01 et seq. (2001), established this Office, which has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Code Ann. § 1-606.03.

Here, Employee is arguing that because he has served a total of fifteen (15) days suspension without pay for two separate incidents, one incident the subject of this appeal and the other incident the subject of a separate appeal, he should be allowed jurisdiction. Thus, Employee is now attempting to bring the other OEA Matter No. 1601-0397-10 appeal into this appeal as well. The following analysis will dispose of this argument.

Whether Employee's appeal should be dismissed for lack of jurisdiction.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (OPRAA) amended certain sections of the CMPA. Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-606 of the Code in pertinent part as follows:

(1) D.C. Code § 1-606.3(a) is amended as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force. . . .

Thus, § 101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only:

- a performance rating that results in removal;

- a final agency decision effecting an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more; or
- a reduction in force

Therefore, as of October 21, 1998, this Office no longer has jurisdiction over appeals from suspensions of less than ten (10) days and from grievances.

The plain language of OPRAA compels the dismissal of this appeal for lack of jurisdiction. The starting point in every case involving construction of a statute is the language itself. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language. *Banks v. D.C. Public Schools*; OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), __ D.C. Reg. __ (); *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980).

Here, as of October 21, 1998, § 101(d) of OPRAA clearly and unambiguously removed appeals of suspensions of less than ten (10) days and grievance appeals from the jurisdiction of this Office. Further, since the passage of OPRAA, this Office has consistently held that appeals involving suspensions of less than ten days and grievances are not within our jurisdiction. *See, e.g., Brown, et al. v. Metropolitan Police Department*, OEA Matter Nos. J-0030-99 *et seq.* (February 12, 1999), __ D.C. Reg. __ (); *Phillips-Gilbert v. Department of Human Services*, OEA Matter No. J-0074-99 (May 24, 1999), __ D.C. Reg. __ (); *Farrall v. Department of Health*, OEA Matter No. J-0077-99 (June 1, 1999), __ D.C. Reg. __ (); *Anthony v. Department of Corrections*, OEA Matter No. J-0093-99 (June 1, 1999), __ D.C. Reg. __ (); *Moore v. Metropolitan Police Department*, OEA Matter No. J-0046-99 (February 17, 1999), __ D.C. Reg. __ (); and *Forrest v. D.C. General Hospital*, OEA Matter No. J-0066-99 (April 9, 1999), __ D.C. Reg. __ ().

Effective October 21, 1998, OPRAA amended other sections of the CMPA. Among these amendments was the addition of a statutory time limit for filing an appeal in this Office. The filing deadline reads as follows: “Any appeal shall be filed within 30 days of the effective date of the appealed agency action.” D.C. Official Code § 1-606.03(a) (2001). This Office’s Rules and Regulations have been amended to reflect this change. *See* OEA Rules 604.1 and 604.2, 46 D.C. Reg. at 9299.

Employee appeals his suspension of five days and a different five-day suspension that were held in abeyance pursuant to an agreement he had earlier worked out with Agency. Based on the above statute, there are two problems with Employee’s argument that this Office has jurisdiction over the instant appeal. First, all suspensions of less than ten days are grievable matters and therefore not within the jurisdiction of this Office. Second, no law or regulation allows Employee to add together his penalties from two separate appeals involving two separate incidents just so he can

claim jurisdiction.

Here, Employee is attempting to appeal: 1) a grievable matter; and 2) a suspension of less than 10 days. The record contains no other facts that would erase the statutory mandate of § 1-606.03 of the Code. Thus, I have no choice but to dismiss this appeal for lack of jurisdiction.

ORDER

It is hereby ORDERED that this appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Joseph Lim, Esq.
Senior Administrative Judge